

## **SUBCHAPTER 3. PESTICIDE DEALERS**

### **7:30-3.1 General requirements**

(a) No person shall distribute, sell, or offer for sale or supervise the distribution, sale, or offering for sale of any restricted use pesticide to an end user without first meeting the requirements of certification and licensing as a pesticide dealer unless:

1. Such person is working under the direct supervision of a responsible pesticide dealer and where an employer-employee relationship exists between the person supervising and the person actually distributing the pesticide;
  - i. For the purposes of this subchapter and N.J.A.C. 7:30-4, a person is under direct supervision only if the person supervised and the person supervising are employed at the same pesticide outlet.
  - ii. "Employed at the same pesticide outlet" means that the person supervising and the person supervised shall both have physical work spaces at the same pesticide outlet. In addition, all records of restricted use pesticide sales performed by the person supervised shall be kept at the same pesticide outlet as the person supervising and shall be immediately available upon request by the Department.
2. Such person is a pesticide applicator who distributes pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application;
3. Such person is a State or county agency or instrumentality thereof and is providing pesticides to its employees for its own programs;
4. Such person is a duly licensed pharmacist dispensing a prescription pharmaceutical which contains a substance which could be classified as a restricted use pesticide;
5. Such person is a veterinarian administering or dispensing a restricted use pesticide for use on animals as a part of his or her practice;
6. Such person is distributing a restricted use pesticide under the provisions of an experimental use permit issued by the EPA or the Department; or
7. Such person is a scientist conducting limited educational research or experiments involving a restricted use pesticide for the purpose of gathering information about the pesticide.

(b) Persons exempt under this section from all certification requirements shall not be considered to be pesticide dealers.

(c) The Department may grant an exemption from the provisions of this subchapter to any person who has shown to the satisfaction of the Department that compliance with the provisions of this subchapter will result in undue hardship and that granting of the exemption will not, in the opinion of the Department, result in danger or financial loss to man or the environment.

1. Examples of situations to which (c) above may apply include, but are not limited to:
  - i. An applicator business going out of business;
  - ii. A private applicator going out of business; or
  - iii. The death of an applicator or dealer who still holds restricted use pesticides.
2. In situations where the Department has granted an exemption, the seller shall meet all the record keeping requirements and distribution restrictions pursuant to N.J.A.C. 7:30-3.7 and 3.8, with the exception of N.J.A.C. 7:30-3.8(b).
  - i. Upon request by the Department, records of sale shall be sent to the Pesticide Control Program, Attn: RUP Sales Records, P.O. Box 411, Trenton NJ 08625-0411.

(d) This subchapter also applies to out-of-State pesticide dealers who distribute, sell, offer for sale or supervise the distribution, sale, or offering for sale of State or Federal restricted use pesticides to New Jersey end users.

### **7:30-3.2 Certification**

(a) In order to become certified, an applicant shall pass an examination approved or administered by the Department. The examination shall include, but not be limited to, such areas as pesticide handling and safety, environmental considerations, symptoms of pesticide poisoning, current laws and regulations, and label comprehension.

(b) **Any person who is assigned a certification examination date, and fails to be present on that examination date without just cause, shall be subject to a \$50.00 fee.**

(c) Application for examinations shall be made on a form supplied by the Department which shall be filed with the Department no later than midnight of the closing date for the examination as determined by the Department.

### **7:30-3.3 Licensing**

(a) Within 12 months after a person has become certified and eligible to become licensed as a pesticide dealer, the certified pesticide dealer shall complete and file with the Department an application to become licensed and shall include as an integral part of the application an annual license fee of \$75.00. A fee not to exceed \$10.00 may be charged for each duplicate license issued. Any certified pesticide dealer who fails to file within the 12 month period will lose certification status and shall again become certified in accordance with the provisions of this subchapter.

(b) The license year shall expire on **October 31** of each calendar year.

(c) Applications for new licenses will be accepted from certified pesticide dealers throughout the calendar year, but a full year's license fee will be required. All such licenses will expire on **October 31** following the date of application except that the Department may issue a license for an additional year when an application is initially filed during the last three months of the license year.

(d) The certification and license of a pesticide dealer are not transferable.

(e) A pesticide dealer shall notify the Department, in writing and within 30 days, if any information as shown on the license application changes.

(f) No person shall be eligible for a license as a pesticide dealer until reaching 18 years of age.

### **7:30-3.4 License renewal**

(a) A certified pesticide dealer shall be licensed annually with the Department and pay the license fee of \$75.00.

(b) A pesticide dealer who has not become licensed with the Department for two consecutive license years shall lose certification status and shall again become certified and licensed in accordance with the provisions of this subchapter.

### **7:30-3.5 Continuing certification**

In order to maintain his or her certification, the pesticide dealer shall meet the requirements for continuing certification as specified by the Department. If the requirements for continuing certification are not met, the pesticide dealer shall again be certified in accordance with the provisions of this subchapter.

### **7:30-3.6 Right of entry or collection of samples**

(a) In order to determine compliance with the requirements of the Act or rules promulgated thereunder, the Department may, at reasonable hours enter any building or place except private residences pursuant to (c) below, for the purpose of investigating an actual or suspected violation relating to pesticides, ascertaining compliance or non-compliance with any rules, regulations or orders of the Department. The Department may conduct an inspection or sampling, and may procure samples for analysis or examination from any lot, package or parcel of pesticide or substance suspected to contain a pesticide. If the owner, operator or agent in charge of the place to be inspected is present, officers or employees of the Department shall notify him or her of their intent to inspect or sample, and inform him or her of the reason therefore. Having been so notified, no person shall prevent officers or employees of the Department from conducting such inspection or sampling.

(b) Notification pursuant to (a) above may also consist of a "Notice Of Attempt To Contact" delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. When such "Notice" has been sent by certified mail, the owner, operator or agent in charge of the place to be inspected shall have one week after the date of delivery to contact the Department, Pesticide Control Program and arrange for the inspection or sampling.

(c) Those portions of a private residence used for business purposes shall be accessible for inspection and sampling. These portions include, but are not limited to, the office and record keeping areas, storage areas, mixing/loading sites, and vehicle parking areas.

(d) Compliance with N.J.A.C. 7:30-3.6 shall be a condition of licensing for any out-of-State licensee.

### **7:30-3.7 Records**

(a) A pesticide dealer shall keep, for each distribution or sale of restricted use pesticides with which he or she is associated, a record containing the following information:

1. The name and address of the purchaser and the name and address of the purchaser's employer. If the purchaser is self-employed, the name and address of his or her business;
2. The brand **or** trade name and the EPA registration number of each restricted use pesticide distributed or sold;
3. The quantity of each restricted use pesticide distributed or sold;
4. The date of the distribution or sale;
5. The certified pesticide applicator license number used by the purchaser at the time of sale or distribution. If any of the acceptable alternatives to a State of New Jersey pesticide applicator's license, as specified in N.J.A.C. 7:30-3.8, are used, the certification or license number or other proof used, shall be recorded in lieu of the certified pesticide applicator license number; and

6. If the purchaser's employer or business is a licensed pesticide applicator business, the license number of the pesticide applicator business.

(b) The records or copies thereof shall be kept for a minimum of three years. These records may be kept by a pesticide dealer business pursuant to the provisions of N.J.A.C. 7:30-4.

(c) All records and information required to be kept pursuant to this section shall be immediately provided to the Department upon request. Such records shall also be immediately provided to medical personnel in emergency cases.

(d) The records of sale or distribution for all pesticides used under a State or Federal Experimental Use Permit, FIFRA Emergency Exemption or Section 24(c), Special Local Need registration shall be kept separately from the other records of sale or distribution.

### **7:30-3.8 Sale of restricted use pesticides**

(a) No pesticide dealer shall distribute or sell a restricted use pesticide to an end user unless the purchaser presents a valid pesticide applicator license.

1. For the purpose of this section, the presentation of only a commercial pesticide operator's license is not acceptable.
2. For the purpose of this section, a valid certification issued by a Federal agency shall be acceptable in lieu of a State of New Jersey pesticide applicator's license if the purchaser is applying a pesticide on property or premises owned or rented by the Federal government, if the purchaser is a Federal employee engaged in the performance of his or her official duties, and if the purchaser has been certified as an applicator of pesticides under a Federal agency plan which has been approved by the United States Environmental Protection Agency pursuant to the provisions of Section 4 of FIFRA, (7 U.S.C. §136(1)) as amended.
3. For the purposes of this section, one of the valid operator licenses or certifications listed below is acceptable in lieu of a State of New Jersey pesticide applicator's license for obtaining chlorine gas, a restricted use antimicrobial:
  - i. Public Water Treatment System license;
  - ii. Public Water Distribution System license;
  - iii. Public Wastewater Treatment System license;
  - iv. Public Wastewater Collection System license; or
  - v. Industrial Wastewater Treatment System license, except NN license.
4. For the purposes of this section, proof that the end user is a veterinarian is acceptable in lieu of a State of New Jersey pesticide applicator's registration for a veterinarian obtaining restricted use pesticides for use on animals as part of his or her practice.
5. For the purposes of this section, sale of a New Jersey State restricted use pesticide to an end user who will not be using it in New Jersey, shall not require a valid pesticide applicator license.
  - i. The dealer shall meet all the record keeping requirements pursuant to N.J.A.C. 7:30-3.7, with the exception of N.J.A.C. 7:30-3.7(a)5 and 6.
  - ii. The dealer shall also obtain a statement signed by the end user that the New Jersey restricted use pesticide shall not be used in New Jersey.
  - iii. This paragraph applies only to pesticide dealers physically located within the boundaries of the State of New Jersey.

- (b) All transactions involving the sale or distribution of restricted use pesticides to an end user

shall be conducted by or under the direct supervision of a certified and licensed pesticide dealer employed at the pesticide outlet where the transactions take place.

- (c) No person or agent who distributes, sells, or offers for sale a restricted use pesticide to any person shall:
1. Misrepresent the degree of certification and licensing required by such person to apply the pesticide being distributed, sold or offered for sale; or
  2. Disseminate misinformation as to the correct use of the pesticide as provided in the Act and this Chapter.
- (d) No person shall distribute or sell for resale, a restricted use pesticide to a retail dealer or distributor without first informing the purchaser in writing that the pesticide being distributed or sold is a restricted use pesticide.

#### **7:30-3.9 Sale of general use pesticides**

- (a) No pesticide dealer shall sell any general use pesticide to **an unlicensed** person who they know must be certified and licensed under the provisions of N.J.A.C. 7:30-6, 7 or 8 unless the dealer **gives** or has previously **given** the buyer the Pesticide Program's information sheet on certification and licensing.
1. A record **equivalent to that required under N.J.A.C. 7:30-3.7(a)** shall be kept **for each sale referenced in (a) above (except the license number of the certified pesticide applicator and license number of the pesticide applicator business)**.
- (b) Indications that a person must be so certified and licensed include, but are not limited to, purchasing under the name of a business, farm, apartment complex, school or municipality.
- (c) The record of **sale** shall be **kept for a minimum of three years, and shall be** immediately provided to the Department upon request.

#### **7:30-3.10 Assignment of work**

No person shall require any individual to distribute restricted use pesticides unless such person is certified and licensed as a pesticide dealer or working under the direct supervision of a responsible dealer pursuant to N.J.A.C. 7:30-3.1(a).

#### **7:30-3.11 Denial, suspension, or revocation of pesticide dealer license**

- (a) The Department, when it determines that grounds exist, may:
1. Deny an application for a license as a pesticide dealer;
  2. Revoke a pesticide dealer license;
  3. Suspend a pesticide dealer license.
- (b) Each of the following acts shall constitute a ground for which any of the disciplinary actions described in (a) above may be taken:
1. Refusing or, after notice, failing to comply with provisions of the Pesticide Control Act or this chapter or any Order issued by the Department pursuant thereto;
  2. Making false or fraudulent claims through any form of written or verbal communication, misrepresenting the effect of any pesticide or application methods to be utilized;
  3. Falsifying or making misleading statements in the application for pesticide dealer

- certification or licensing;
- 4. Falsifying or failing to keep required records;
- 5. Allowing the dealer license to be used by any person for any purpose which will evade or be in violation of the provisions of the Act or this chapter;
- 6. Evading or attempting to evade the provisions of the Act or this Chapter, or aiding, abetting, combining with, or conspiring with any person for any purpose which will evade or be in violation of the provisions of the Act or this chapter;
- 7. Selling or distributing a pesticide in such a manner as to cause harm, injury or damage or a significant risk of harm, injury or damage to the public health, safety or welfare or the environment.

(c) In the event of the issuance of a final order assessing a civil penalty under Section 14(a) (7 U.S.C. § 136(l)) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 135 et seq.) or a criminal conviction under Section 14(b) (7 U.S.C. § 136(l)), the Department shall review and may suspend or revoke the license of any person so assessed or convicted.

(d) Where the Department acts pursuant to (a) above, the Department shall afford a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, to any person who is aggrieved by the order and who has applied to the Department for a hearing within 20 days after issuance of the order.

(e) The dealer shall return the certified dealer license to the Department, Pesticide Control Program within two weeks of a suspension or revocation.

#### **7:30-3.12 Reciprocity**

(a) The Department may waive portions of the initial certification testing where an applicant has previously been certified in another state or territory pursuant to a valid certification test given in that state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a dealer certification program substantially equivalent to New Jersey's.

(b) A New Jersey pesticide dealer license will be issued pursuant to this section if the following conditions are satisfied:

1. The Department receives proof of a valid certification from any state or territory which has been officially recognized by the State of New Jersey as having a dealer certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide dealers and the reciprocal acceptance thereof;
2. The registrant demonstrates to the Department through testing a knowledge of relevant New Jersey pesticide control laws and regulations; and
3. The Department receives all applicable fees.

#### **7:30-3.13 Container and Containment Rule**

**No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal**

**Container and Containment regulations).**